

EXECUTIVE OFFICER SUMMARY REPORT
August 10, 2005

ITEM: 5

SUBJECT: **Metropolitan Transit System (MTS):** Administrative Assessment of Civil Liability against the MTS (formerly known as the Metropolitan Transit Development Board) Violation of SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity at its Mission Valley East Light Rail Transit Project in San Diego. (Tentative Order No. R9-2005-0173) (Document No. 2) (*Vicente Rodriguez*)

PURPOSE: The Regional Board will consider accepting a proposed settlement in response to Administrative Civil Liability Complaint No. R9-2005-0062 by adopting tentative Order No. R9-2005-0173. If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability.

PUBLIC NOTICE: A 30-day public comment period on the proposed settlement of ACL Complaint No. R9-2005-0062 (Document No. 4) was published in the San Diego Union-Tribune on June 27, 2005 (Document No. 3). The notice was published on the Regional Board's Web Page on June 28, 2005.

DISCUSSION: **BACKGROUND:** Beginning May 2001 through June 2005, the Metropolitan Transit System (MTS) owned and operated a construction site known as the Mission Valley East Light Rail Transit (MVE LRT) Project. The MVE LRT project consists of a relatively narrow six miles long -134 acres rail line, constructed within and adjacent to the San Diego River, Alvarado creek, and other lesser tributaries to the San Diego River. The new rail line section begins at the Grantville community in San Diego, then continues underground through San Diego State University, and terminates aboveground at the western side of La Mesa near Interstate 8 (Document No. 1). As part of its responsibility for the construction project, the MTS was required to develop a Storm Water Pollution Prevention Plan (SWPPP) and implement Best Management Practices (BMPs) to reduce pollutants in storm water and non-storm water discharges from the construction site.

On March 17, 2005, the Executive Officer issued ACL Complaint No. R9-2005-0062 to the MTS in the amount of \$500,000. The

Complaint alleged a wide variety of violations including chronic failure to implement and/or maintain BMPs over two wet weather seasons (499 days); at least 27 days of sediment discharges into Alvarado Creek (a tributary to the San Diego River); and the discharge of sewage from a construction trailer directly into Alvarado Creek.

The Regional Board met with the MTS and SANDAG to discuss the allegations of the ACL Complaint on April 19, 2005. In the months of May and June additional follow-up meetings and conversations were engaged to discuss settlement. On June 23, 2005, the Regional Board received a tentative settlement offer from the MTS and then a formal settlement offer dated July 19, 2005 (Document No. 5).

The formal settlement offer includes payment of \$150,000, with \$100,000 to the State Water Resources Control Board's Cleanup and Abatement Account and \$50,000 for a Supplemental Environmental Project (SEP) to improve water quality within the San Diego River. In addition, the settlement includes a long term commitment from MTS/SANDAG to include training of their staff on all construction projects annually for at least five years, to enhance their staff awareness of storm water quality issues; and developing/refining construction contract language for enforcing the storm water permit with their contractors.

In recent weeks the Regional Board has received approximately seven SEP applications and another six that are tentative proposals in hopes of consideration for funding under this settlement. The SEPs applications consist of projects that include some type of action, such as stream cleanup activities, land acquisition, water quality monitoring, and broader studies and plans studies. The Regional Board has not completed reviewing the proposals. At this time, Tentative Order No. R9-2005-0173 will establish only the total amount of the liability and the appropriateness of a SEP. This approach will provide the Regional Board additional time to review the SEP applications and not delay the consideration of the settlement. The Regional Board will then consider approval of one or more recommended SEPs at a subsequent Board meeting.

The MTS settlement offer has the following positive aspects:

1. The settlement of \$150,000 is a sufficient amount of liability to deter the MTS, and other dischargers, such as SANDAG (San Diego Association of Governments), as the new developer of transit related capital improvement projects in the region, from non-compliance;
2. The MTS waives the right to petition the State Board on this matter;

3. The project at the MTS construction site is complete, and MTS has achieved compliance with the Construction Storm Water Permit;
4. The settlement is consistent with the State Board's Water Quality Enforcement Policy;
5. Settlement allows the Regional Board to redirect formal enforcement resources to other high priority violations.

No comments concerning this matter were received during the 30-day comment period.

KEY ISSUES: None.

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

1. Location Map
2. Tentative Order No. R9-2005-0173
3. San Diego Union-Tribune Notice
4. ACL Complaint R9-2005-0062
5. July 19, 2005 Settlement Offer

RECOMMENDATION(S): Adopt tentative Order No. R9-2005-0173.